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# **Policy suggestions for free and independent media in the United Kingdom**

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## **Project profile**

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It investigates the configuration of media policies in the aforementioned countries and examines the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, are thoroughly discussed and analysed.

Project title: European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems

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**Yolande Stolte** graduated with an LLB degree in 2007 from the University of Leiden and obtained an LLM in Civil Law from the same university in 2008. She was awarded the VSB foundation scholarship to further specialise in her main field of interest: IP and Media Law. She used this to obtain an LLM in Innovation, Technology and the Law at the University of Edinburgh, writing a dissertation on 'The impartiality requirement in the UK: Television news reporting in the 21st Century'. After graduating in 2009 she has worked as a Research Fellow at the University of Edinburgh, while managing the online legal journal SCRIPTed and working towards a PhD on 'The legal protection of war correspondents in conflict zones'.

## **Policy suggestions for free and independent media in the UK**

*Yolande Stolte and Rachael Craufurd Smith*

### **Policy Summary**

In the UK both the political establishment and the courts recognise that the media play an essential role in the democratic process. Freedom of expression is afforded specific protection through the Human Rights Act 1998 and the UK is a signatory to the European Convention on Human Rights and a Member of the European Union, which affirms in article 11 of the Charter of Fundamental Rights of the EU the importance of freedom of expression and media pluralism. A central question, therefore, is whether the media in the UK are able to perform, and are in fact performing, the democratic and social functions ascribed to them. On the one hand, the phone-hacking scandal has revealed that certain sections of the media have failed to respect fundamental journalistic standards. On the other, the costs of litigation, coupled with patchy recognition of press interests in legislation, the common law and prosecution practice, can chill legitimate investigative reporting. The existing regulatory framework for the media has also failed to keep pace with convergence and is increasingly complex, creating uncertainty for industry and citizens.

Media law and regulation in the UK is thus in a state of flux, with the Communications and Human Rights Acts, defamation law, prosecution practice regarding the press, media ownership controls and press self-regulation all currently under review by a variety of policy actors.

This paper draws on a number of recent policy documents published by civil society organisations, such as the Media Standards Trust and the Co-ordinating Committee for Media Reform, as well as reports by academics, regulatory and state bodies, such as the House of Lords Select Committee on Communications. In particular, it builds on two reports, and the underlying research for those reports, prepared for the MEDIADEM project. The reports, published on the MEDIADEM website, examine political, economic, social and legal factors that either support or constrain media freedom and independence in the UK.

Below we set out a number of key recommendations that we consider merit further examination and that we hope will feed into the current debates about media law reform. In particular, we recommend:

- 1. The introduction of a self or co-regulatory cross-media regulatory framework that is both suitable for a converged media environment and capable of commanding the trust and support of the public, journalists and editors.**
- 2. Government and Parliament should consider how the state can help to address the economic pressures on quality journalism, for example, through targeted tax relief or charitable status for specific types of media organisation, as well as through subsidies, possibly supported by a tax on those parts of the communications sector that profit from, but do relatively little to create, original media content, such as search engines or ISPs.**
- 3. Concrete steps should be taken by industry to promote ethical practices within individual media organisations. These steps could be required as a membership condition of any new self or co-regulatory body, discussed in recommendation 1 above. Improvements could include the designation of a specific individual to be responsible for monitoring editorial policies and**

journalistic practices in each firm; the appointment of reader's editors; enhanced involvement of journalists in key strategic decisions, such as the appointment and dismissal of editors; the introduction of 'conscience clauses' to protect staff from undue editorial pressure; and ongoing training.

4. Procedures should be put in place to ensure that the public interest in press freedom is 'mainstreamed' and consistently recognised in all legislation affecting the media, as well as by prosecuting authorities, courts and regulators. Clear and coherent guidelines regarding the public interest in press reporting should be developed and consideration given to enshrining key rights and responsibilities of the media in primary legislation as has been done in Luxembourg.
5. Although the current system for appointing media regulators is a relatively open one, certain appointments remain subject to government influence. We thus recommend a greater role for Parliamentary oversight, with key regulatory posts subject to approval by a cross-party Parliamentary committee after a public hearing. To avoid the (appearance of) political bias, past as well as serving politicians should be precluded from holding such offices and in making appointments the primary emphasis should be on relevant experience in the media sector.
6. In order to ensure the continuing independence of the BBC, the level of funding should be fixed on the basis of a transparent process incorporating an independent advisory body as in Germany. The process should allow time for public debate and consultation with interested bodies, before approval by Parliament. We recommend that the licence fee be solely used to fund the BBC to keep a clear link in the public's mind between the fee and the services they receive from the Corporation. Funds, once designated, should not be subject to subsequent alteration. Modifications to the way in which the licence fee is levied may now be required to take into account the different ways that individuals access media content.
7. We support the present review of media ownership rules and recommend that Government and Parliament consider re-introducing fixed ownership limits in order to create certainty for industry and reduce the risk of agency capture. Oversight of individual cases and general trends should be vested in an independent media authority such as Ofcom, with no scope for government intervention. Consideration should also be given to establishing a 'converged' competition regulator for the communications sector, able to monitor and review the actions of increasingly powerful online operators.
8. We recommend the introduction of a legal requirement that media firms, established and operating in the UK, should publish ownership details. The information should be readily accessible, for instance, on the media organisation's website, in order to enable citizens to make informed choices about the media they use.
9. Transparency should similarly be required in relation to any vested interests that editors, publishers and journalists may have in specific content, and any payments made or benefits in kind provided for content. As a condition of membership of any future self or co-regulatory regime, media organisations should be required to disclose such interests to the public in a timely, relevant and accessible fashion.
10. In order to render the law more accessible for the public, we recommend that related media acts should be consolidated and that every effort is made to

**ensure that future legislation is comprehensible, taking into account the technical nature of the field. Given the cross border nature of many communication services we also suggest that where there are proposals for reform in areas affecting the media in one jurisdiction, for instance regarding defamation, co-ordination takes place with relevant legislative, regulatory or judicial bodies in the other UK jurisdictions to facilitate, where appropriate, a consistent approach to law reform.**

An annex presenting in a succinct form the project's recommendations targeting the European Union and the Council of Europe for media freedom and independence can be found at the end of this document. The full version of the recommendations is available at: Policy report addressing state and non-state actors involved in the design and implementation of media policies supportive of media freedom and independence, the European Union and the Council of Europe, MEDIADEM policy report, <http://www.mediadem.eliamep.gr/findings/>.

### **Key observations**

Existing regulatory provisions, notably the 2003 Communications Act, have been criticised for not recognizing the primary importance of the interests of citizens in a free, independent and diverse media environment. Given the role of the media in democratic societies, clear priority should be given in any future regulatory system to the interests of citizens over those of consumers and industry. Effective procedures should also be put in place to ensure that those interests are properly identified, either through specific representation, consultation or independent research. Similarly, the importance of press freedom has received patchy recognition in legislation and the degree of protection offered the press from prosecution, or in the form of defences in civil or criminal proceedings, is not always clear. Consistent 'mainstreaming' of, and clarification regarding, press interests are thus desirable.

At present, the law relating to the media is spread across a number of acts and amending provisions. Although the Internet facilitates access to updated legislation, it remains difficult for journalists and the public to understand what the law provides. Consideration should thus be given to formal consolidation of related media acts in a single legislative provision and how best future legislation can be made comprehensible to the public, albeit in a technical field.

The present regulatory environment is complex and has not kept pace with convergence. Fragmentation of regulation according to media type is unlikely to be sustainable and can lead to confusion amongst consumers and citizens. For example, on-demand audiovisual media services are subject to a limited but effective co-regulatory regime, while similar video-content posted by newspapers on their websites is subject to a more exacting set of standards but implemented through a self-regulatory system with limited sanctions and partial industry coverage. We suggest that it is now necessary to re-examine the case for separate regulation of the press from other media sectors, taking into account the experience of successful cross-sector self-regulatory schemes in other European countries such as Finland.

Absent effective regulation, whether state, co- or self-regulation (wealthy) individuals will turn to the courts for redress. In the UK, the risk of legal proceedings and legal costs can have a chilling effect on the media. It is thus important that any future regulatory system that replaces the now discredited Press Complaints Commission is impartial, effective, low cost

and able to command both the trust of the public and the media. Suggestions for a new system of adjudication in media cases warrant further consideration.

Media consolidation is also a current concern in the UK. Powerful media interests may be able to distort or suppress information and exclude alternative voices from the market. Deregulation has resulted in a case by case process of merger review that has proved lengthy, uncertain and open to government manipulation. We thus suggest that consideration should be given to the reintroduction of fixed ownership limits, both mono and cross media, overseen by an independent regulator, with no scope for government intervention. In addition, individuals need to know who owns the media they access and the existence of any conflicts of interest or payments that could affect the content of specific reports.

The current economic pressures on newspapers, but also on other media players, pose a significant risk to the future of a free and independent media sector in the UK. The loss of advertising revenue has had a marked effect on newspapers, which in turn has placed greater pressure on journalists to produce content, limiting the time that can be allocated to investigations and increasing the reliance on pre-packaged content. While the quality of top level journalism in the UK is very high, there is a risk that investigative journalism becomes too expensive to be maintained.

One of the key characteristics of the UK media market is the strong public service sector operating alongside a well developed commercial sector, providing a varied media environment for citizens. The distinct public service models in operation help to support provision of a wide range of content, while early adoption of independent programme quotas has led to a strong and diverse independent sector. The willingness of governments in the past to support the adoption by public service broadcasters of new technologies and their entrance into new media markets has enhanced the consumer experience and the contribution of public service media to the public sphere. The value for citizens of a strong, independent and institutionally varied public service media sector should not be underestimated and should continue to receive support, even when under pressure from commercial interests and allied political groups.

Although there has been a strong emphasis in the UK on professional, independent regulators, government still plays a role in the appointment of key personnel and in fixing the terms of operation of the BBC and level of the licence fee. Consideration should be given to how the independence of regulators and public service media can be further guaranteed and, in particular, whether greater involvement of parliament would reduce the risk of partisan pressure or, alternatively, would further politicise these institutions.

## **Policy recommendations**

### **1. Creating a regulatory framework for the converged media environment**

The current regulatory framework employed in the UK was largely created when different types of media (video, audio, text) were easily identifiable and linked to specific methods of distribution. In the light of convergence this is no longer the case and the existing regulatory framework is increasingly complex. Thus, while the Editor's Code of Practice (PCC Code) enforced by the (caretaker) Press Complaints Commission applies to audiovisual media content on newspaper websites, the Authority for Television on Demand (ATVOD) regulates on-demand audiovisual media content elsewhere. Given the significant differences between the two regulatory codes, this may lead to consumer confusion. Moreover, the very limited substantive scope of ATVOD's jurisdiction, could push individuals to rely on the courts to resolve disputes, which can be both expensive and time consuming.



A new regulatory framework is thus needed. Two approaches in particular merit further consideration. The first would be to create a **self-regulatory framework open to all media sectors and players**. As the PCC Code is substantively quite close to the content codes applicable to broadcast television, a framework broadly based on the PCC Code could be extended across all sectors, video, audio and text, to create a more coherent framework. The more detailed provisions in the broadcasting codes could, where relevant, be drawn on to develop the code further. The regime could be open to all content providers or, alternatively, could be framed so as to exclude user-generated content that could prove unduly demanding to regulate. Those organisations subject to specific public service codes would be exempt. Consideration should here to be given to:

- Encouraging the **broadest possible engagement by industry** with the system. Access to speedy, alternative dispute resolution procedures is likely to be a significant attraction but participating firms could also be offered certain fiscal advantages on the basis that they are less likely to make use of the courts and thus call on public resources.
- **Involving journalists** as well as members of the public in all aspects of the regulatory body's work. This should provide better safeguards for editorial integrity and enhance public trust in the organisation, no longer seen as primarily acting in the interests of editors or proprietors.
- The imposition of **sanctions beyond an apology or correction**, for example, an increase in the annual levy on firms found to have breached the code and/or compensation for victims subject to a cap.
- Expanding the **remit and powers** of the body to facilitate own-initiative investigations and a more overt role in promoting ethical practices, rather than simply responding to complaints.

Given the UK's EU obligations under the Audiovisual Media Services Directive, it would still be necessary to maintain ATVOD, or some other body subject to state oversight, to implement the directive's basic provisions relating to on-demand video services. Alternatively, the existing **co-regulatory mechanism** employed in relation to ATVOD could be extended both as to scope, so that it covers providers of text and audio as well as video content, off as well as online, and to standards, to cover the areas included in the PCC Code. This would ensure that all relevant firms participate in the scheme but for this reason would also require a clear demarcation to be made between those firms and individuals covered and those that are not, possibly distinguishing providers of professional from user-generated content, as above. Co-regulation would enable a more exacting enforcement system, backed ultimately by fines, to be put in place. Again, bodies subject to an alternative approved code, such as the BBC, would be exempt.

**Recommendation:** We recommend the introduction of a cross-sector, cross platform, self or co-regulatory framework, suitable for a converged media environment that will command the trust and support of the public, journalists and editors. Participating firms should be expected to formally commit to the promotion of ethical practices in their media organisation as discussed in recommendation 3.

## **2. Further state support to relieve the economic pressures on journalism**

News publications are currently facing serious economic pressures due to a loss of advertising revenue and the currently unstable business model, as well as declining readership. This pressure is often passed on to journalists, who are under enormous pressure to produce more copy, in less time, with fewer resources. This has led to heavy use of news agency copy, PR material and the copying of third party content, which is arguably less valuable to the public than investigative journalism that provides information not previously available. Consideration should be given to how the state can help to alleviate these pressures, which could, in the long term, damage the viability of the press sector in the UK.

**Recommendation:** Consideration should be given to how the state itself can address some of the economic pressures on quality journalism, for example through various forms of tax relief, the award of charitable status for certain types of organisation, and the imposition of a tax on those parts of the communications sector that profit from, but do little to create, original media content, notably search engines or ISPs, with the revenue redistributed to support investigative journalism.

## **3. Further industry support for ethical journalism**

As noted above, journalists are under increasing pressure, which may lead them to resort to unethical practices. There are several ways to alleviate some of these pressures. Firstly, firms participating in any future self or co-regulatory regime could be required to designate a specific official with responsibility to monitor and report regularly on ethical practices in the firm. Firms could also be required to draw-up and publish a document setting out their level of commitment to ethical practices, adherence to specific regulatory regimes and how they intend to implement specific ethical commitments. Encouragement could similarly be given to the appointment of readers, listeners or viewers' editors, either for a single firm or group of companies to help cover the additional cost.

Secondly, participating firms could be required to implement a conscience clause, as proposed by the National Union for Journalists, offering protection to journalists from being fired for refusing to partake in unethical journalism. While the actual effect of such a clause would be difficult to predict it would at least formally recognise that journalists should be able to stand up to their editor without the immediate fear of being fired. Journalists could also be more closely involved in key decisions relating to the firm, in particular, regarding editorial appointments.

Thirdly, it is important that journalists stay up-to-date with developments given the rapidly changing media environment. Thought should be given to developing and funding a framework for ongoing professional training offered to all journalists during working hours. Costs could be kept down by providing online training courses.

**Recommendation:** Industry should be encouraged or required to take measures designed to promote ethical practices within their own firms. These could include: the designation of a specific individual responsible for monitoring editorial policies and journalistic practices; the adoption and publication of a document detailing the firm's commitment to promoting ethical practices; the appointment of 'reader's editors'; adoption of a conscience clause to protect journalists; greater involvement of journalists in key decisions relating to the firm; and enhanced professional training.

#### **4. Clarification of the public interest in investigative journalism**

Investigative journalism plays a vital role in the democratic process but may impact on the rights of others or contravene the criminal law. Despite formal recognition of the importance of a free press in section 12 of the Human Rights Act, not all statutory provisions that affect the media include a public interest defence. Moreover, the relevance of such considerations on prosecutors has not been clear (though guidelines have now been proposed in England) and courts have not always afforded sufficient weight to media freedom, notably in relation to the protection of sources. This creates considerable uncertainty for the media and may chill legitimate investigative reporting.

**Recommendation:** To enhance certainty for the press, coherent guidelines regarding the public interest in press reporting should be developed. This public interest should also be ‘mainstreamed’ to ensure that it is consistently recognised in all legislation affecting the media, by prosecuting authorities, courts and regulators. Consideration should be given to the adoption of legislation setting out key rights and responsibilities of the media as has been done in Luxembourg.

#### **5. Creation of an open and transparent appointment system for key board members of Ofcom and the BBC Trust**

While important measures have been put in place to protect the independence of media regulators, there remains concern that indirect influence could be exerted by government through its control over the appointment of key board members. We suggest that such appointments should be approved by a cross-party committee of both Houses of Parliament after a public hearing designed to enhance public transparency and accountability.

**Recommendation:** The appointment of key board members to media regulatory bodies should be approved by a representative political body drawn from the various parties in parliament, after a public hearing. To reduce the risk, or appearance, of potential political bias both past as well as present members of parliament should be excluded from holding such posts, which should be awarded primarily on the basis of the candidate’s expertise in the media field.

#### **6. Secure funding of the BBC**

While political influence can be exerted through appointments, it can similarly be exerted through the ability to control the level of funding made available to regulatory bodies and public service broadcasters. The 2010 license fee settlement significantly reduced the BBC’s budget, yet took place with little transparency and no parliamentary oversight, leaving the process open to undue political pressure.

Another concern is that the licence fee is currently being used to finance several services not directly linked to the BBC, such as the roll-out of broadband. The method of levying the fee may also no longer be in keeping with current media consumption patterns. Levying the licence fee solely from those who watch or listen to the BBC ‘live’ fails to recognise the increasing number of citizens who access the BBC on-demand through online viewing (or time-shifting through digital recorders). Certain European countries have now

moved to levy the licence fee on a per household basis or, as in Finland, through a hypothecated tax that is levied both on individuals and companies.

**Recommendation:** In order to ensure the continuing independence of the BBC, the level of funding should be fixed on the basis of a transparent process incorporating an independent advisory body such as the Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten (KEF) in Germany. The process should allow time for public debate and the recommendations of the advisory body should then be put to parliament for approval. Where parliament diverges from the KEF's recommendation, clear and convincing reasons need to be given. The licence fee should be solely used to fund the BBC to keep a clear link in the public's mind between the fee and the services they receive. Funds, once designated, should not be subject to subsequent alteration. Modifications to the way in which the licence fee is levied may be required to take into account the different ways individuals now access media content.

## **7. Clear and effective control of media ownership concentration by an independent media authority**

At present the government has discretion as to whether or not to trigger a specific public interest investigation under s58 of the Enterprise Act 2002 where media mergers are involved. Application of the present rules is time consuming and has created considerable uncertainty for industry. In particular, the integrity of the system has been brought into question by revelations regarding potential biases or inappropriate practices in the consideration of the News Corporation/BSkyB proposed merger last year. Moreover, the media specific merger rules do not cover online media services nor do they deal with cases of organic growth, which can be equally damaging to media plurality. The Internet has led to the development of new platforms, aggregators and search engines that exert considerable control over the flow of information but do not necessarily contribute to production of content.

**Recommendation:** Consideration should be given to the reintroduction of fixed media ownership limits to protect citizens and the democratic process, create certainty for industry and reduce the scope for agency capture. Oversight of media concentration, both in relation to individual cases and general trends, should be vested in an independent media authority such as Ofcom. The government should not be involved in such investigations. Media concentration rules should take into account both online and traditional broadcast and press services. Consideration should also be given to establishing a 'converged' competition regulator for the communications sector, able to monitor and review the actions of increasingly powerful online operators.

## **8. Disclosure of ownership information**

Providing the public with clear and easily accessible media ownership information allows them to judge the source from which they are receiving information. Especially in sectors where news is not regulated for impartiality, for example in newspapers and most online news provision, it is important that the public can evaluate and judge information independently.

**Recommendation:** To protect the interest of citizens in a pluralist media environment, media firms established and operating in the UK should be required to publish

**ownership information. As most publications have their own websites this information could easily be included online, for example on a separate page, but could also helpfully be collated in a central register.**

## **9. Disclosure of vested interests in content by editors, publishers and journalists**

To enable the public to evaluate information conveyed by the media, editors and journalists should disclose any financial, or other, interests they may have in published content. Where money or goods have been received in return for publication of material this should be noted in, or at the end of, the story. Vested interests in companies, through for example the holding of shares, or political affiliations should also be disclosed to allow the public to evaluate and judge the provided information. As noted, this could also be indicated at the end of a programme or report or included alongside ownership information on a separate (web) page of the publication.

**Recommendation: Vested interests that editors, publishers and journalists may have in specific content, and any payments made or benefits in kind provided for content, should be disclosed and rendered readily accessible to the public.**

## **10. Consolidation and clarification of existing media legislation and further co-ordination in developing the law and best practice relating to the media across England and Wales and the devolved nations**

At present the law relating to the media is spread across a number of acts and amending provisions. It is thus difficult for journalists and the public to understand what the law provides. The law should be written as clearly as possible in a field that is extremely technical and all related provisions consolidated in a single, up to date and readable piece of legislation. The UK includes a number of distinct legal jurisdictions and, as a result, there are a number of differences in the law affecting the media across the state. In the past, for example, Scottish and English courts have taken different approaches in contempt cases and it is notable that although guidelines for prosecuting the press and a new defamation act have been proposed for England, similar steps have not yet been taken for Scotland.

**Recommendation: The law relating to the media should be consolidated where possible into a single, readable piece of legislation. Given the increasingly international nature of the press we would encourage co-operation across England and Wales and the devolved nations to ensure that wherever possible a consistent approach to law reform is undertaken.**

## **ANNEX: Summary of policy suggestions targeting the EU and the Council of Europe for media freedom and independence**

The emerging global framework of media communication calls for an increasingly coordinated approach that links national policies to the transnational perspective. In the past decades the institutions of the European Union (EU) and the Council of Europe (CoE) have addressed several aspects of media policy based on their respective competences and enforcement powers.

In the case of the EU, the policy framework recognises both the cultural and the economic dimensions of media regulation, and at the same time fosters the protection of public interest values, such as media pluralism and the protection of human dignity in the media sectors. The involvement of the CoE in the media sector, in turn, has significantly changed over time, leading to an autonomous media policy, deemed necessary to cope with political and technological developments.

Both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) have contributed extensively to the shaping of media policy in the Mediadem countries. The two European courts pursued slightly diverging goals over time, with the ECtHR being more focused on media freedom as a driver of democracy, and the CJEU more oriented towards an economic approach, and thus towards the liberalisation of media industries and the avoidance of concentration of ownership. The ECtHR jurisprudence and the European Convention on Human Rights have had an overall positive influence on media freedom and independence, especially with regard to libel and defamation cases, restrictions on publishing, protection of private life and protection of sources. However, this does not exclude problems and tensions as regards the effective implementation of ECtHR case law. Against this background, action will be needed to facilitate cooperation between courts, both through direct judicial cooperation and through a more comprehensive elaboration of common concepts and principles at the European level, as will be advocated in the following policy recommendations.

### ***1. Foster a more integrated approach to media policy***

The **CoE** should pursue its efforts in the definition of a ‘new notion of media’ by addressing, through recommendations and guidelines, the legal consequences that flow from the adoption of an integrated approach to media, and by providing benchmarking cases where different regulatory strategies are adopted.

The **European Commission** should lay the foundations for a revised approach to media regulation by clarifying the policy issues that are likely to remain important in the age of convergence, and those that are not likely to raise concerns in the future.

The **European Parliament** should host a fruitful debate on the meaning of an ‘integrated approach’ to media and its consequences for freedom of expression and pluralism as well as on the viability of the industry players involved.

### ***2. Adopt a technology-neutral approach to media regulation***

**EU institutions, and primarily the European Commission,** should promote and operationalise the principle of technological neutrality in all media policy interventions, from regulation to competition policy, regardless of the type of legal instrument used (soft or hard law).

### ***3. Accelerate the shift from public service broadcasting to public service media***

**The EU and the Council of Europe** should interpret user-generated content within the realm of the principle of freedom of expression, supporting its blossom and development.

**EU institutions** should adopt a clear regulatory strategy regarding the need to safeguard user-generated content from forms of proprietisation. Consideration could be given to the following measures: promoting user-generated content in the key elements of public service across media; granting civil society access to public service media in terms of time, space and visibility; providing funding schemes to support user-generated content, based on a clear and transparent awarding procedure; etc.

### ***4. Revise the relationship between ex ante regulation and ex post competition policy taking into account new technological developments and update competition policy***

**The European Commission and the European Parliament** should lead the work on updating the application of competition policy in the media sector. Given the difficulty of capturing anticompetitive behaviour, it is important that pluralism is promoted through a combination of *ex ante* regulation, and *ex post* antitrust scrutiny.

### ***5. Improve governance and provide for sound institutional arrangements at European level***

The **Council of Europe** should take action to stimulate more direct uptake of its guidelines on the editorial independence and operational autonomy of public service broadcasting/public service media.

The **European Commission** should revise its guidelines on assessing the impact of regulatory proposals on fundamental rights to include detailed guidance on the policy areas where legislative action might be required to ensure protection of fundamental rights.

Both the **ECtHR and CJEU** should devise more effective remedies in case of violation of freedom of expression by public and private actors.

The **European Commission and the European Parliament** should lead a reflection on the independence and autonomy of public and private media regulators, to promote effective and accountable regulation at national level.

### ***6. Strengthen institutional and governance arrangements at pan-European level***

**EU institutions** should aim at developing pan-European coordination of regulatory approaches, use of soft law, promotion of private regulation, where appropriate, and effective exchange of best practices.

### ***7. Refine and strengthen the evaluation of private regulation in the media domain***

The **Council of Europe** should adopt general guidelines on developing effective and legitimate private regulation in the media sector combined with direct and peer monitoring.

The **European Commission** should adopt general guidelines on the *ex ante* assessment and the *ex post* evaluation of private regulatory solutions within its overall smart regulation toolkit.

### ***8. Enhance coordination of the journalistic profession at the European level***

**EU institutions** should ensure that domestic media private regulators strengthen their coordination at EU level and move towards a more integrated structure overcoming the current divisions often based on the press/broadcasting distinction.

**EU institutions** should foster the coordination of the journalistic profession at the European level.

***9. Strike a more even balance between copyright protection, Internet neutrality and freedom of expression, in particular on the Internet***

**EU institutions** should foster a consistent approach to Internet neutrality, copyright enforcement and freedom of expression across countries, as well as develop a policy approach which does not negatively affect the open, end-to-end architecture of the Internet and, along with it, access to all content of choice by Internet users.

**EU institutions** and the **Council of Europe** should pro-actively participate to the international debate on Internet governance in order to ensure that the end-to-end principle is preserved, and that the proposed enhanced government control over the Internet does not negatively affect freedom of expression.

***10. Improve the implementation of ECtHR rulings at national level and promote new forms of judicial cooperation***

The **Council of Europe** should promote the accountability of institutions in its member countries, providing the Committee of Ministers with the task of developing guidelines aimed at improving the implementation of ECtHR case law, as well as enhance the dialogue between ECtHR judges and national judges by supporting *fora* where domestic legal traditions can be exchanged and commented.